HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 38 2004 (M/S)

Jaiveer Singh
Versus.

Distt Judge Haridwar and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 06.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 38 (MS) of 2004

Jaiveer Singh
S/o Sh. Dharam Veer Singh
R/o Village Libhararhaedi, Pargana
Mangalore Tehsil Roorkee
District Haridwar and others .... Petitioners

Vs.

District Judge Haridwar and others ..... Respondents

Counsel for the petitioner Sh. P.M.N Singh
Counsel for the respondents Sh. Alok Singh

Date: 6.8.2004

Hon. Rajesh Tandon J.

Heard Sh. P.M. N Singh learned counsel for the petitioners and Sh. Alok Singh learned counsel for the respondents.

Petitioners has filed a suit for permanent injunction against the defendant along with the application order 39 Rule 1 of the Code of Civil Procedure for ad-interim injunction. The defendant has field his objections.

The Trial Court has held that prima-facie case for injunction is made out against the defendant. The balance of convenience also lies in favour of the plaintiff. The application for interim injunction was allowed accordingly.

Defendant has field an appeal against the order of temporary injunction. The District judge has dismissed the appeal vide order dt. 15-1-2004.

Being aggrieved the defendant has filed the present writ petition.

In the full Bench 1991 Allahabad High Court 114 Ganga Saran Vs. Civil Judge and others, it has been held as under:

"Where an aggrieved party approaches High Court under Article 226 of the Constitution against an order passed in civil suit refusing to issue inju8nction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Article 226 of the Constitution would not be maintainable. Following the decision of the Supreme Court in Qamaruddin's case (Supra) this Court cannot issue a writ of mandamus to a private party unless he is under a statutory duty to perform a public duty. It is not shown to us that the respondents in these petitions are under any statutory duty and therefore, these petitions are not maintainable."

In Surya Dev Rai Vs. Ram Chander Rai and others 2003 (6) SCC 675, provides as under:-

"We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran case relied on by the learned counsel for the respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide paragraph 11, the Full Bench has itself held that where the order of the civil court suffers from patent error of law and further causes manifest injustice to the party aggrieved, then the same can be subjected to a writ of certiorari. The Full

Bench added that every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further, such an order causes substantial injustice to the party aggrieved jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench (AIRp. 119).

"Where an aggrieved party approaches the High Court under Article 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Article 226 of the Constitution would not be maintainable."

"Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. It it intervenes in pending proceeding there is bound to be delay in termination of proceedings. If it doses not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and

corrected at a later state and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where " a stitch in time would save nine". At the end, we may sum up by saying that the owner is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

Since the two courts below have recorded the finding with regard to the primafaccie case and has granted the injunction, I feel no infirmity in the order so as to interfere under Article 227 of the Constitution of India.

However, the trial court is directed to decide the suit within a period of 6 weeks from the filing of the certified copy of the order. During this period the parties are directed to maintain status quo.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

Dated: 6.8.2004

M.K.